

Exhibit D

*Excerpts of 04/11/2025
Deposition of Dr. Barber*



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Transcript of Michael Barber, Ph. D.

Date: April 11, 2025

Case: Williams, et al. -v- Hall | NAACP, et al. -v- Berger, et al.

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WORLDWIDE COURT REPORTING & LITIGATION TECHNOLOGY

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IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA

-----X
SHAUNA WILLIAMS, et al., :
Plaintiffs : Civil Action No.
V : 23 CV 1057
REPRESENTATIVE DESTIN HALL, :
In his official capacity as :
Chair of the House Standing :
Committee on Redistricting, :
et al., :
Defendants :
-----X
NORTH CAROLINA STATE CONFERENCE:
OF THE NAACP, et al., :
Plaintiffs : Civil Action No.
V : 23 CV 1104
PHILIP BERGER, in his official :
Capacity as the President :
Pro Tempore of the North Carolina :
Senate, et al., :
-----X

Deposition of MICHAEL BARBER, Ph.D.
Conducted virtually
Friday, April 11, 2025
10:05 a.m.

Job No.: 579524
Pages 1 - 211
Reported by: Dianna C. Kilgalen

1 complicated -- complicated process.

2 Even though the county groupings can
3 form like whole numbers of districts, the county
4 groupings, are not -- do not all have equal
5 population or -- or are even equal orders of
6 population.

7 So one grouping might be twice as large
8 as another but it also might be like two times a
9 little bit larger than another group. So that
10 county grouping is going to have twice as many
11 districts. But there's a little I suppose you
12 could call it like extra population in that
13 grouping.

14 And so when you go to draw the districts
15 inside of that grouping, those districts are more
16 likely to be overpopulated themselves. When I
17 say overpopulated, I mean within -- still within
18 the legal boundary but just more populated than a
19 grouping that maybe starts out as having a little
20 less than a whole unit of district population.

21 Q. Thank you. That's helpful. So to state
22 it perhaps oversimplified, the ideal population
23 for a district changes depending upon which
24 cluster or grouping you are in across a
25 particular plan?

1 A. So can you clarify what you mean by the
2 ideal population?

3 Q. Sure. That is a good clarification.
4 Thanks for pointing it out, Doctor Barber.
5 Let's say if you were to try to make every
6 district within a particular cluster have the
7 exact same population figure, that as the ideal,
8 we would take that that as the ideal population
9 figure for that cluster, that number will change
10 depending on which cluster you are in.

11 Is that fair to say?

12 A. Yes. So right. If you created all --
13 if all of the districts in each cluster had the
14 same population, the districts across clusters
15 would have different populations, yes. That's --
16 that's an accurate description.

17 Q. Got it. So it's a fair implication from
18 that correlation that you demonstrate here in
19 table 7 that what cluster a district is in is
20 highly correlated with what population that
21 district will have across the plan as a whole,
22 right?

23 A. There's -- there's a strong
24 relationship, yes.

25 Q. And you also examined a few other

1 MS. RIGGINS: Objection. Go ahead,
2 Doctor Barber. You can answer.

3 A. The clusters are -- how do I say this?
4 The clusters, the county groupings, the county
5 clusters are hard boundaries. The districts do
6 not cross over the county groupings.

7 And so aside from the fact that they are
8 all somewhat related to each other because they
9 are coming from the same state, the arrangement
10 of districts in one grouping is -- does not have
11 any relationship to the arrangement of groupings
12 in a different district or in a different
13 grouping.

14 Q. Got you. Other than the fact that both
15 those groupings would be set by Stevenson and be
16 required to comply with the plus or minus five
17 percent rule, right?

18 A. Yes. That's correct.

19 Q. Got it. In order to understand the
20 significance of those within cluster deviations,
21 would you want to compare those deviations to
22 other districts within that cluster or districts
23 in other clusters?

24 A. I think you could do both. You could
25 learn something from both of those.

1 Q. But you agree with me the districts,
2 like you were testifying a moment ago, the
3 districts in separate clusters are -- do not
4 impact the population figures in each other?

5 A. Yeah. That's -- from my previous
6 answer, I think is consistent with that.

7 Q. All right. I want to turn back to
8 section 5 of your report which I believe starts
9 on page 32. So we are still on Exhibit 1. Let
10 me know when you are there.

11 MS. RIGGINS: Chris, I'm just going to
12 lodge an objection for the record. I think
13 section 6 that you were just talking about had
14 some applications outside of the Larius
15 (phonetically spelled) claim. I will obviously
16 give you any leeway as you want to go through
17 this, but I would like to lodge an objection
18 standing to any questions about section 5 because
19 the Larius claims were dismissed in the court
20 summary judgment order earlier in this week.

21 Is it okay if we do a standing objection
22 to that, Chris? I don't want to keep
23 interrupting.

24 MR. SHENTON: I was going to suggest a
25 standing objection. I will also note for the

1 with perhaps one exception, the precincts that
2 have been moved or not moved, sorry, the
3 precincts in Wilmington that are in District 8
4 appear to be more Democratic than the ones that
5 are adjacent that have not been selected, with
6 maybe one exception. It looks like there is one
7 that was added that is less Democratic and there
8 is one that was not added that is more
9 Democratic.

10 And it looks like we are really dealing
11 with maybe six, six or seven perhaps precincts in
12 question.

13 Q. Okay. Thank you for that explanation,
14 Doctor Barber. Do you recall what the population
15 of Senate District 8 is in the enacted plan?

16 A. I do not off the top of my head. I
17 would need to look in the report.

18 Q. Okay. I can represent to you the total
19 population for the district is 214,542 per Daves
20 Redistricting. Does that sound approximately
21 right?

22 A. I really have no idea, but I don't doubt
23 your representation.

24 Q. Do you recall whether or not either of
25 these districts is particularly close to the plus

1 or minus five percent rule required by Stevenson?

2 MS. RIGGINS: Objection. Go ahead.

3 A. I believe District 7 is -- has -- is
4 lower than the ideal population by some number I
5 can't remember. But it's -- 7 is the
6 underpopulated district and 8 is the
7 overpopulated district.

8 Q. And if I told you that the population
9 deviation for Senate District 7 was negative 4.94
10 percent, so 4.94 percent below the statewide
11 ideal population figure, would you have any
12 reason to dispute that?

13 A. No. That is --

14 MS. RIGGINS: Objection. That
15 mischaracterizes -- I actually think it
16 mischaracterizes -- it might mischaracterize the
17 table in Doctor Barber's report.

18 MR. SHENTON: Do you mind directing me
19 where you are looking, Alyssa? I want to make
20 sure.

21 MS. RIGGINS: You said 4.97. Is that
22 what you said?

23 MR. SHENTON: I think I said 4.94 for
24 District 7, but I was doing that thinking in my
25 head. So I may have messed up.

1 MS. RIGGINS: If you are saying 4.94,
2 then we are all good. I want to make sure the
3 record was clear.

4 MR. SHENTON: Sure. I appreciate that.

5 A. I -- I do not disagree with either of
6 the lawyers.

7 BY MR. SHENTON:

8 Q. Always nice when we can agree. Would
9 you agree with me that that is very close to the
10 minus five percent number that Stevenson creates
11 as an absolute requirement for state legislative
12 districts?

13 A. So it's -- yes. It's .06 away from five
14 percent underpopulated.

15 Q. Okay. All right. I want to turn to the
16 next paragraph here which is for the Iredell-
17 Mecklenburg Senate cluster. You say in the first
18 sentence that Mr. Fairfax moves one precinct from
19 SD 39 to SD 42 and then moves another precinct
20 from SD 40 to SD 42.

21 Did I read that right?

22 A. Yes.

23 Q. So we are talking about four total VTD
24 moves in Mr. Fairfax's alternative?

25 A. Correct.

1 case.

2 Q. Would you agree with me that changing
3 any of these precincts for another one would
4 serve to weaken the Republican partisan
5 performance of Senate District 42?

6 A. Again, except conditional on the
7 elections that we are looking at, I guess I would
8 say it's -- I'm not sure. There could be some of
9 these precincts that have -- it really will
10 depend on the population of the precinct.

11 Some of these adjacent precincts might
12 be extremely similar in their partisan lean. So
13 I -- I really couldn't be certain.

14 Q. But no reason to dispute that this is,
15 at a minimum, one of the most Republican leaning
16 districts you could draw in this area of the
17 state?

18 MS. RIGGINS: Objection. Go ahead.

19 A. I think it is -- I think that's probably
20 accurate inside of the, you know, inside of
21 Mecklenburg County. I mean, this side -- this
22 portion of the county is the more Republican
23 leaning side of the county. So I think that's an
24 accurate description.

25 Q. Okay. I want to turn back to Exhibit 1,

1 Q. Okay. I want to pull up what I want to
2 mark Exhibit 5 which is a DRA screenshot of this
3 area of the Senate -- excuse me -- not the
4 Senate, the House which I'm trying to drop in the
5 chat here. If you want to open that and let me
6 know when you've got it up.

7 A. Okay.

8 Q. Does this look like the part of the
9 state that we are talking about in this paragraph
10 of your report?

11 A. Yes, it does.

12 Q. Do you recall whether House District 35
13 is over or underpopulated from the statewide
14 ideal population figure in the enacted plan?

15 A. I do not recall.

16 Q. If I told you it was underpopulated,
17 would have any reason to disagree with that
18 characterization?

19 A. No. I trust that you are accurate on
20 that.

21 Q. Okay. So looking at this screenshot,
22 are there any precincts you would identify that
23 could be added to House District 35 that would
24 not decrease the Republican partisan performance
25 of House District 35?

1 A. So not to be repetitive, but again, I'm
2 not sure which elections we are looking at here.
3 But within the elections that you have displayed
4 on this map, it looks like possibly a precinct on
5 the far eastern edge of the county could maybe be
6 added. That would probably be your best bet.

7 Q. Any other precincts you would identify?

8 A. Not that -- not that, you know, not
9 right now that I'm looking at these maps. I
10 could -- obviously, I wouldn't make changes just
11 looking at the map because there's a lot of other
12 factors you'd have to consider.

13 Because I also don't know the population
14 of these precincts that we are talking about
15 here. So it may be that they are not -- it's not
16 possible to move them because they have too many
17 people or they don't have enough people and that
18 sort of thing.

19 But right now as I'm looking at this
20 map, no, I don't have any other precincts that I
21 want to highlight.

22 Q. Okay. I want to turn back to your
23 report, Exhibit 1, and move to page 35 where you
24 talk about the fourth cluster which is Forsyth-
25 Stokes House cluster. Do you see that?

1 rephrase my question.

2 If any one of those VTDs were to move
3 from HD 75 to HD 91 it would reduce the
4 Republican partisan performance of HD 75. Is
5 that right?

6 MS. RIGGINS: Objection. Go ahead.

7 A. Again, I don't know if that is the case
8 or not just because I don't know the number of
9 people, because the shift is going to be a
10 function of the partisan -- how partisan the
11 precinct is and how many people live in the
12 precinct and its partisanship relative to the
13 district.

14 And so it might be the case that moving
15 one of these precincts would have, you know, some
16 impact in making 75 less Republican leaning. If
17 the precinct that is being removed has -- was
18 kind of similar to the district overall, then it
19 might not have any impact.

20 It -- it would be difficult to know
21 without knowing more about the population of each
22 of the precincts and the overall partisan
23 composition of the district.

24 Q. Sure. Let me try one other way. Is it
25 fair to say that all of the VTDs on the border of

1 House District 75 and House District 91 as
2 expressed in the composite have more Republican
3 votes than Democratic votes in them?

4 MS. RIGGINS: Objection. Go ahead.

5 A. So using these elections, it does look
6 as though those border -- those precincts that
7 lie on the border between 75 and 91 are more
8 Republican than Democratic leaning.

9 Q. So would it be fair to say that moving
10 any one of those VTDs out of House District 75
11 would have the impact of reducing the net number
12 of Republican votes in House District 75?

13 MS. RIGGINS: Objection. Go ahead.

14 A. It would depend on -- it would depend on
15 the lean of 75 to begin with. And so if it's --
16 if the precinct being moved out is -- has the
17 equivalent partisan lean as the district overall,
18 then it wouldn't have any impact at all. So
19 that's the one --

20 (Thereupon, there was overtalk.)

21 MR. SHENTON: I'm sorry, Doctor Barber.

22 A. That is the one caveat. You also have
23 to factor in what is the precinct -- or what is
24 the district, like where is the district starting
25 from.

1 Q. Okay. Talking just about the raw number
2 of votes, would you agree with me it will reduce
3 the number of votes that Republicans receive?
4 Sorry. Go ahead.

5 A. I think that is kind of just
6 mathematically true, right? Like you are moving
7 people out and the precincts appear in these
8 elections to have more Republican votes than
9 Democratic votes.

10 Q. Okay. And then moving to the other side
11 of House District 91, what about those what looks
12 like three VTDs on the border between House
13 District 91 and House District 74?

14 A. Those precincts also appear to be
15 Republican leaning in these elections.

16 Q. Okay. So the similar dynamic would
17 apply for those VTDs as well as the one that we
18 were discussing a moment ago in House District
19 75?

20 A. Yes. I think that's correct.

21 Q. Just a few more questions here, Doctor
22 Barber. Would you identify anything other than
23 partisanship as explaining the population
24 deviations that we have been looking at across
25 these four clusters?